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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JUNE NEWTON,

Plaintiff,

v.

NORMAN SOLOMON, an individual,
ART AND ARTIFACTS, INC., dba ART
& ARTIFACT THE PHOTOGRAPHIC
ART CENTER, a California corporation,
CELEBRITY, INC, a dissolved Delaware
corporation and WESTERN CANON,
INC., a dissolved Nevada corporation,
dba THE CELEBRITY VAULT, JOHN
DUNNICLIFF, an individual, KLAUS
MOELLER, an individual, CAPITAL
ART, INC., a Delaware corporation,
CAPITAL ART, LLC, a California
limited liability company, and EMAGE
INTERNATIONAL, INC., a Nevada
corporation,

Defendants.

CASE NO. CV11-02350 ODW(VBKx)

**SECOND AMENDED COMPLAINT
FOR COPYRIGHT
INFRINGEMENT, CONVERSION
AND VIOLATION OF CAL. CIVIL
CODE § 1740 ET SEQ.**

[DEMAND FOR JURY TRIAL]

Action Filed: March 18, 2011

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SAN FRANCISCO, CALIFORNIA 94111-3629

1 Plaintiff June Newton ("Plaintiff" or "Mrs. Newton") hereby alleges as
2 follows:

3 JURISDICTION AND VENUE

4 1. Jurisdiction. This action is brought, and jurisdiction lies within this
5 court, pursuant to 28 U.S.C. §§ 1331, 1332, 1338 and 1367. This Court has federal
6 question jurisdiction pursuant to 28 U.S.C. § 1331 in this matter in that Plaintiff seeks
7 damages against Defendants named herein under Sections 501 through 505 of the
8 Copyright Act of the United States, 17 U.S.C. §§ 101 *et seq.* This Court has diversity
9 jurisdiction pursuant to 28 U.S.C. § 1332 as the controversy exists between Plaintiff,
10 domiciled in the Principality of Monaco, and Defendants, who are citizens of
11 California. Furthermore this Court has jurisdiction over the subject matter of this
12 action pursuant to 28 U.S.C. §§ 1338(a) and 1338(b). Finally, this Court has
13 supplemental jurisdiction under the principles of pendent jurisdiction as codified in
14 28 U.S.C. § 1367.

15 2. As the actions that gave rise to this controversy took place primarily in
16 the County of Los Angeles, this action shall be assigned to the Western Division.

17 3. Venue lies within this district pursuant to 28 U.S.C. § 1391(b)(1) as
18 Defendant Norman Solomon ("Solomon") resides or has resided in this district;
19 pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and
20 omissions giving rise to Plaintiff's claims alleged herein occurred in this district; and
21 pursuant to 28 U.S.C. § 1391(c), Defendants Art and Artifacts, Inc. ("Art &
22 Artifacts") and Western Canon, Inc. and/or Celebrity, Inc., dba The Celebrity Vault
23 are subject to personal jurisdiction in this district as each of their business addresses
24 were within this judicial district at the time the action was commenced.

25 THE PARTIES

26 4. Plaintiff is and at all times material herein has been an individual
27 domiciled in the Principality of Monaco.

28 ///

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1 5. On information and belief, Solomon is an individual who resides or has
2 resided in Los Angeles, California.

3 6. On information and belief, Defendant Art and Artifacts, Inc. (originally
4 sued as “Art & Artifact, The Photographic Art Center”) is a California corporation
5 doing business in Los Angeles, California, is controlled by Defendant Solomon, and
6 was acting at the direction of Defendant Solomon in doing the things herein alleged.
7 See www.art-artifact.com.

8 7. On information and belief, Defendants Celebrity, Inc. (a dissolved
9 Delaware corporation) and/or Western Canon, Inc. (a dissolved Nevada corporation)
10 are doing business in California as The Celebrity Vault (“Celebrity Vault”), with a
11 gallery in Beverly Hills, California, but have surrendered their qualifications to do
12 business in California. See www.thecelebrityvault.com.

13 8. On information and belief, Defendant John Dunnicliff (“Dunnicliff”) is
14 an individual who resides in Escondido, California.

15 9. On information and belief, Defendant Klaus Moeller (“Moeller”) is an
16 individual who resides in Los Angeles, California.

17 10. On information and belief, Defendant Capital Art, Inc. (“Capital Art”) is
18 a Delaware corporation doing business in California and with its principal place of
19 business in Culver City, California.

20 11. On information and belief, Defendant Capital Art, LLC (“Capital Art,
21 LLC”) is a California limited liability company doing business in California and with
22 its principal place of business in Culver City, California.

23 12. On information and belief, Defendant Emage International, Inc.
24 (“Emage”) is a Nevada corporation not in good standing, doing business in
25 California, which is controlled by Defendant Solomon.

26 **ALLEGATIONS COMMON TO EACH CAUSE OF ACTION**

27 13. Plaintiff is the widow and sole heiress of the fine arts photographer
28 Helmut Newton (“Artist”), now deceased (1920-2004). Mrs. Newton is the exclusive

1 owner of all worldwide copyrights in photographs of Artist.

2 14. In 1983, Artist created a limited collection of certain of his photographs,
3 known as the "Private Property Collection" (the "Photographs"). Each portfolio in
4 the Private Property Collection consisted of three "suites" of 15 photographs each, for
5 a total of 45 photographs per portfolio. Each photograph was printed as a gelatin
6 silver print, signed, consecutively numbered in pencil and copyright stamped. Artist
7 intended that the full edition of the Private Property Collection would be limited to 75
8 portfolios, all of which were printed.

9 15. Starting about December 1984, Artist engaged Spectrum Enterprises,
10 Limited ("Spectrum Enterprises") in Los Angeles, California to assist him in
11 promoting the Photographs. Plaintiff is informed and believes, and alleges thereon,
12 that on or about December 14, 1984, Artist and Spectrum Enterprises, represented by
13 Solomon, entered into a written agreement, designated the "Portfolio Agreement,"
14 memorializing the promoter relationship. Spectrum Enterprises acknowledged in the
15 Portfolio Agreement that all copyrights in Artist's work belonged solely to Artist, that
16 it had a limited license to market and distribute the work in portfolio form, and that it
17 did not receive any express or implied license to use Artist's materials without his
18 authorization. (A purported copy of the Portfolio Agreement provided to Plaintiff by
19 Solomon, which appears to be incomplete and whose authenticity Plaintiff cannot
20 presently confirm, is attached hereto as **Exhibit A.**)

21 16. In the course of this engagement, Artist provided Spectrum Enterprises
22 and Solomon with certain photographic works comprising the Photographs.

23 17. Solomon represented as late as August 2010 that he was provided with
24 three complete portfolios of the Photographs but that each of the portfolios was
25 provided to fine arts galleries in London, Paris and Los Angeles with Artist's
26 permission and authorization.

27 18. After the sale of approximately 25 portfolios, Artist decided that no
28 further portfolios should be sold and that the remaining Photographs produced for the

Private Property Collection were not to be sold or released into the marketplace.

19. The Portfolio Agreement terminated pursuant to its own terms no later than August 1, 1986, and all rights thereunder reverted to Artist. Thereafter, Solomon and Spectrum Enterprises had no further right to possess, distribute or sell Artist's works, including the Photographs, or the promotional materials that accompanied them.

20. On information and belief, Plaintiff alleges that after the expiration of the Portfolio Agreement, Solomon and/or Dunncliff wrongfully retained certain unsold Photographs and/or negatives, slides or other promotional materials that Solomon and/or Spectrum Enterprises were entitled to use solely for promotional purposes during the term of the Portfolio Agreement.

21. Each of the Photographs was first published in a country that was then a party to the Universal Copyright Convention (a "UCC Party"), or while Artist was domiciled in a country that was then a UCC Party and while the United States of America was also a UCC Party. Accordingly, the Photographs are subject to copyright protection under the Copyright Act of 1976. 17 U.S.C. § 104(b)(1), (2).

22. Some or all of the Photographs were published as part of collective works registered with the United States Copyright Office prior to the infringing events alleged herein.

23. Because of the limited production and sales of the Private Property Collection, the Photographs are extremely valuable. At the time of the Portfolio Agreement, portfolios sold for at least \$7,500. A complete portfolio presently has an estimated value in excess of \$250,000 – \$350,000.

24. On information and belief, in or about February 2011 and thereafter, Defendants Art & Artifacts and Celebrity Vault offered for sale on an internet auction site, eBay, certain photographic prints from the Private Property Collection, one example of which is set forth below:

///

1 “Helmut Newton B&W print of “Shoe” Monte Carlo 1983
2 This amazing print is exculsively (sic) from his private
3 collection. Helmut Newton was mostly known for his
4 spectacular fashion photography.

5 We are excited to announce our complete new line of some
6 of Helmut Newton’s amazing provocative and erotically
7 charged B&W photography. These prints are from his
8 private collection. These are all 11” X 17” prints. We are
9 able to offer these limited prints to you at slightly under
10 retail value. Every print comes with a COA and is shipped
11 in a stiff mailer”

12 (A true and correct copy of the eBay posting on February 23, 2011 is attached hereto
13 as **Exhibit B.**)

14 25. On information and belief, in or about February 2011 and thereafter,
15 Defendants Art & Artifacts and Celebrity Vault offered for sale on eBay certain
16 “original lithographs” featuring images from the Private Property Collection, one
17 example of which as set forth below:

18 “CELEBRITY vault

19 Proudly presents

20 HELMUT NEWTON *PRIVATE PROPERTY*

21 Original Fine Art Lithographs

22 In 1984, Norman Soloman produced Helmut Newton's
23 limited edition portfolio titled *Private Property*, which was
24 introduced at gallery exhibitions in Paris and London. At
25 the same time, Mr. Soloman also published a limited
26 edition series of Fine Art Lithographs featuring many of
27 Mr. Newton’s most iconic images from the *Private*
28 *Property* collection. Twenty-five years later, Celebrity
Vault is excited to announce that we are exclusively re-
introducing the same lithographic series representing twenty
of the most valuable Images from the *Private Property*
collection.

The original 16”x 20” signed limited edition sliver gelatin
prints from the *Private Property* collection have
skyrocketed in value, especially since Newton’s passing in
2004, making the images in this limited edition series of
fine art reproductions from the original negatives a
particularly notable piece of photographic history.

The large 25”x 38” *Private Property* original lithographs,
each featuring an iconic image that catapulted Newton into

1 being one of the most well-known and coveted
2 photographers in the world, will soon be exclusively
3 available for purchase at Celebrity Vault and Art &
Artifact!”

4 (A true and correct copy of the eBay posting on February 19, 2011 is attached hereto
5 as **Exhibit C.**)

6 26. On information and belief, on or before March 2011, Defendant Art &
7 Artifacts generally offered for sale on its gallery website and sold certain
8 “lithographic reproductions” derived from the Photographs. (True and correct copies
9 of Defendant Art & Artifacts’ webpages depicting images of the unauthorized copies
10 of the Photographs in March 2011 are attached hereto as **Exhibit D.**)

11 27. On information and belief, on or before March 2011, Defendant
12 Celebrity Vault generally offered for sale on its gallery website and sold certain “fine
13 art lithograph[s]” of derived from the Photographs. (True and correct copies of
14 Defendant Celebrity Vault’s webpages depicting images of the unauthorized copies
15 of the Photographs in March 2011 are attached hereto as **Exhibit E.**)

16 28. In about August 2011, after commencement of this action, Defendants
17 Solomon, Art & Artifacts and Celebrity Vault (“Original Defendants”) produced a
18 one-page written agreement purportedly executed on about October 14, 2010, by
19 Defendants Solomon and Moeller (the “Solomon-Moeller Agreement”). (A true and
20 correct copy of the Solomon-Moeller Agreement is attached as **Exhibit F.**)

21 29. The Solomon-Moeller Agreement provides in part that:

22 a. Defendant Solomon has, or had, “certain rights . . . to produce
23 promotional material, specifically the fine art poster collection”;

24 b. Defendant Dunnicliff “has custodial rights to twenty
25 negatives/images from the collection that were permitted to be used in the original
26 fine art poster series”;

27 c. Through an alleged agreement with Dunnicliff, Solomon
28 “acquired the exclusive rights to the twenty Private Property images . . . to reproduce

1 10,000 original fine art poster replicas of the original series”;

2 d. Solomon “has spent approximately \$60,000 to acquire these rights
 3 and pay fees associated with the project. Klaus Moeller . . . acquires an equal
 4 partnership and equal rights to the Private Property fine art poster collection” in
 5 accordance with a payment schedule to be completed by March 31, 2011. (The
 6 foregoing provisions directly contravene the express terms of the Portfolio
 7 Agreement provided by Solomon, **Exhibit A.**)

8 30. Plaintiff subsequently discovered a publicly filed OTC – INTERIM
 9 Disclosure Document dated as of May 9, 2011 (“Disclosure”) by Defendant Capital
 10 Art. (A true and correct copy of the Disclosure is attached as **Exhibit G.**)

11 31. On information and belief, based on the Disclosure:

12 a. On May 9, 2011 Defendant Solomon was appointed President and
 13 a director of Capital Art;

14 b. On May 9, 2011 Capital Art acquired Defendant Capital Art, LLC
 15 to serve as its operating subsidiary;

16 c. In March 2011 Capital Art, LLC entered into an Asset Purchase
 17 Agreement (“APA”) with Defendant Solomon and Defendant Emage “giving it right
 18 and title to exclusive and non exclusive licensing rights direct with photographers
 19 and/or their estates” and Capital Art’s “rights include licensing agreements, some
 20 exclusive, to the collections of renowned photographers such as . . . a fine art Helmut
 21 Newton, lithographic collection.”

22 d. Defendant Solomon is founder and was or is President of
 23 Defendant Emage;

24 e. Capital Art, LLC operates or will operate The Vault, a gallery in
 25 Culver City, California, where Capital Art also has its principal office.

26 32. On information and belief, during 2011 Capital Art offered for sale
 27 “Fine Art Lithographs” based on the Photographs. Capital Art’s website included a
 28 page related to Artist which contained the same ten (10) images in the same sequence

1 as depicted at website of Celebrity Vault (attached as **Exhibit B**). See
 2 <http://capitalart.com/?page id=147>.

3 33. The Capital Art website includes the following statements:

4 In 1984, Helmut Newton's only limited edition portfolio, titled Private
 5 Property, was first introduced at gallery exhibitions in Paris and London.
 6 At the same time, the original exhibition promoters also published a
 7 limited edition series of Fine Art Lithographs featuring many of Mr.
 8 Newton's most iconic images from the Private Property collection.
 9 Twenty-five years later, we are again able to re-introduce this exquisite
 10 collection featuring many of the great images taken by one of the world's
 11 most renowned photographers.

12 (A true and correct copy of Defendant Capital Art's webpage depicting images of the
 13 unauthorized copies of the Photographs in September 2011 is attached hereto as
 14 **Exhibit H.**)

15 34. As a direct result of Solomon's and/or Dunnicliff's actions in failing to
 16 return and secretly retaining Photographs and/or promotional materials derived from
 17 the Photographs, Plaintiff has been damaged in an amount to be determined at trial by
 18 Defendants' offer for sale and sale of certain unauthorized photographic works
 19 belonging to Plaintiff.

20 35. In February and March 2011, Plaintiff's counsel notified Original
 21 Defendants that their offer for sale and sale of photographs and/or promotional
 22 materials were infringing on Plaintiff's protected copyrights, and demanded that
 23 Original Defendants cease and desist from further infringing activity. Up to the date
 24 the complaint was filed on March 18, 2011, Original Defendants had not ceased
 25 offering for sale the infringing materials. Thus, the conduct of Original Defendants
 26 and each of them is willful and justifies the imposition of enhanced damages. To the
 27 extent any one or more of Defendants Dunnicliff, Moeller, Capital Art, Capital Art,
 28 LLC and Emage continued to participate in infringing activity after being put on
 notice of the infringement, they would also be subject to imposition of enhanced
 damages.

///

FIRST CLAIM FOR RELIEF
(Against All Defendants for Copyright Infringement – 17 U.S.C. §106 *et seq.*)

36. Plaintiff incorporates by this reference each and every allegation contained in paragraphs 1 through 35 above, as though fully set forth.

37. Plaintiff is the owner of all worldwide copyrights in the Photographs and has the exclusive right to reproduce the Photographs, prepare derivative works from the Photographs, distribute copies of the Photographs to the public by sale or other transfer of ownership, and to display the Photographs, pursuant to section 106 of the Copyright Act.

38. Within the last two years, Defendants infringed upon Plaintiff's copyrights by offering for sale copies of certain prints, fine art posters, lithographs or other materials derived from the Photographs (collectively the "Infringing Materials") without Plaintiff's authorization. Upon information and belief, Defendants have displayed, disseminated and sold unauthorized copies of the Infringing Materials on multiple occasions.

39. In undertaking the conduct complained of in this action, Defendants knowingly, intentionally, and willfully violated Plaintiff's copyrights.

40. Except for the limited purpose described above with regard to the Portfolio Agreement, Artist did not authorize, and Plaintiff has not authorized, Defendants to use, reproduce, create derivative works of, sell, offer for sale or distribute all or any part or portion of the Photographs for any purpose whatsoever.

41. By reason of Defendants' infringement, Plaintiff has sustained and will continue to sustain substantial injury, loss and damage to her ownership rights in the Photographs.

42. Further irreparable harm to Plaintiff is imminent as a result of Defendants' conduct, and Plaintiff is without an adequate remedy at law. Plaintiff is entitled to an injunction restraining Defendants, their officers, directors, agents, employees, representatives and all persons acting in concert with them from engaging

1 in further acts of copyright infringement.

2 43. Based upon Defendants' willful infringement, Plaintiff is entitled to
3 recover from Defendants either statutory damages [17 U.S.C. § 504(c)] or, in the
4 alternative, actual damages sustained by Plaintiff as a result of Defendants' acts of
5 copyright infringement. Plaintiff is at present unable to ascertain the full extent of the
6 monetary damage she have suffered by reason of Defendants' acts of copyright
7 infringement, but is informed and believes, and on the basis of such information and
8 belief alleges, that Plaintiff has sustained such damage in an amount exceeding
9 \$300,000.

10 44. Plaintiff is further entitled to recover from Defendants the gains, profits
11 and advantages they have obtained as a result of their acts of copyright infringement.
12 Plaintiff is at present unable to ascertain the full extent of the gains, profits and
13 advantages Defendants have obtained by reason of their acts of copyright
14 infringement.

15 45. Plaintiff is also entitled to reasonable attorneys' fees and costs she has
16 and/or will incur to enforce her copyrights in the Photographs against Defendants'
17 infringement.

18 **SECOND CLAIM FOR RELIEF**
19 **(Against Defendants Solomon & Dunnicliff for Conversion)**

20 46. Plaintiff incorporates by this reference each and every allegation
21 contained in paragraphs 1 through 45 above, as though fully set forth.

22 47. Plaintiff alleges on information and belief that Defendants Solomon and
23 Dunnicliff retained copies of the Photographs and other materials belonging to Artist
24 that were intended for promotional use only and subsequently attempted to sell or
25 distribute Artist's property, including the Infringing Materials.

26 48. Except for the limited purpose described above and in the Portfolio
27 Agreement, Artist did not authorize, and Plaintiff has not authorized, Defendants
28 Solomon and Dunnicliff to use any part or portion of the Photographs, copies thereof,

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1 or other materials belonging to Artist for any purpose whatsoever.

2 49. The aforementioned acts of Defendants Solomon and Dunnicliff were
3 willful, oppressive, fraudulent and/or malicious.

4 50. As a result of Defendants Solomon's and Dunnicliff's willful and
5 intentional conversion of Artist's property, now belonging to Mrs. Newton, Plaintiff
6 has incurred damages in an amount to be determined at trial.

7 **THIRD CLAIM FOR RELIEF**
8 **(Against Original Defendants for Violation of California Full Disclosure In the**
9 **Sale of Fine Prints – Cal. Civil Code §1740 *et seq.*)**

10 51. Plaintiff incorporates by this reference each and every allegation
11 contained in paragraphs 1 through 50 above, as though fully set forth.

12 52. California's Sale of Fine Prints, Cal. Civil Code § 1740 *et seq.* ("Sale of
13 Fine Prints Law"), makes it unlawful for anyone, including Defendants, to trade in
14 fine arts prints without the disclosures required by sections 1742 and 1744 therein,
15 and without a certificate of authenticity ("COA"). (Cal. Civ. Code §§ 1740-1745.9).

16 53. On information and belief, Plaintiff alleges that the advertisements
17 and/or COAs accompanying Original Defendants' offer for sale of Artist's work
18 created by Artist and belonging to Plaintiff, contain false and/or misleading
19 information including, but limited to, statements that the fine arts prints offered are
20 "exculsively (sic) from [Artist's] private collection" and are "Original Fine Art
21 Lithographs."

22 54. On information and belief, Defendant Solomon wrongfully retained
23 Artist's work and/or promotional materials beyond the term of the Portfolio
24 Agreement and Defendant Solomon is the source of the unauthorized Photographs
25 now being sold by Defendants. While Artist was living, Artist did not know or have
26 reason to know of or suspect Defendant Solomon's wrongful conduct, and until the
27 publication of Original Defendants' offer for sale of Photographs, Plaintiff did not
28 know or have reason to know of or suspect Solomon's wrongful conduct.

///

1 55. As a result of Original Defendants' wrongful actions, Plaintiff is entitled
2 to injunctive relief under the Sale of Fine Prints Law. (Cal. Civ. Code §1745.5(b)).

3 **DEMAND**

4 WHEREFORE, Plaintiff prays for judgment as follows:

5 A. For an order from this Court declaring that Plaintiff holds all rights and
6 interests in the Photographs and is the owner of the stolen property.

7 B. For an injunction restraining and enjoining Defendants from offering for
8 sale, using, distributing, publishing, copying, reproducing, advertising, promoting,
9 adapting, displaying or otherwise exploiting the Photographs.

10 C. For an injunction mandating that Defendants deliver to Plaintiff any and
11 all copies of the Photographs, including the Infringing Materials.

12 D. For a complete accounting and disgorgement of profits attributable to
13 Defendants' exploitation of the Photographs, including from sales of the Infringing
14 Materials.

15 E. For statutory damages or, in the alternative, damages according to proof,
16 plus interest at the legal rate;

17 F. For an award of attorneys' fees and costs; and

18 G. For such other and further relief as the Court deems just and proper.

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff demands a trial by jury.
21

22 DATED: October 6, 2011

SIDEMAN & BANCROFT LLP

23
24 Bv: /S/Constance J. Yu

25 Constance J. Yu
26 Attorneys for Plaintiff
June Newton

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